INTERIOR BOARD OF INDIAN APPEALS

Friends of East Willits Valley v. Acting Pacific Regional Director,
Bureau of Indian Affairs

37 IBIA 213 (04/15/2002)

United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
801 NORTH QUINCY STREET
SUITE 300
ARLINGTON, VA 22203

FRIENDS OF EAST WILLITS VALLEY, Appellant	:	Order Dismissing Appeal
v.	:	
	:	Docket No. IBIA 01-127-A
ACTING PACIFIC REGIONAL DIRECTOR, BUREAU OF INDIAN AFFAIRS, Appellee	:	April 15, 2002

This is an appeal from a May 4, 2001, decision of the Acting Pacific Regional Director, Bureau of Indian Affairs (Regional Director; BIA), to take a tract of land in Mendocino County, California, into trust for the Sherwood Valley Rancheria of Pomo Indians (Tribe). Appellant Friends of East Willits Valley states that it is an unincorporated association of Mendocino County residents formed in 1998. For the reasons discussed below, the Board dismisses this appeal.

In November 1998, the Tribe applied for trust acquisition of a 160.48-acre tract known as Mendocino County Assessor's Parcel No. 103-250-12. The Tribe stated that it intended to build 15 houses for low-to-moderate income tribal members on a 3.5-acre portion of the tract with funds from the U.S. Department of Housing and Urban Development. At the time of its request, the Tribe owned the tract in fee, having purchased it in July 1998.

In 1971, the tract had been made the subject of an agricultural preservation contract under California law. Prior to the Tribe's purchase of the tract, the Tribe and the then-owner applied to the County of Mendocino for cancellation of the contract. The Tribe also entered into a land use agreement with the County under which it agreed that, if the County cancelled the contract, the Tribe would comply with the contract provisions until September 30, 2007 (when, absent prior cancellation, the contract would terminate), for all but the 3.5 acres on which housing was to be constructed.

On July 13, 1998, the County Board of Supervisors cancelled the agricultural preservation contract after finding, among other things, that "advancing the goals of low cost housing takes precedence over agricultural protection policies." Board of Supervisors' Minutes, July 13, 1998, at 3. In August 1998, Appellant filed suit in California Superior Court, contending that, in cancelling the contract, the County acted in violation of the California Environmental

Quality Act (CEQA) and in a manner inconsistent with other State law and the County's General Plan. The Superior Court ruled in favor of Appellant in February 2001. Friends of East Willits Valley v. County of Mendocino, Case No. 79423 (Cal. Sup. Ct. Mendocino County, Feb. 2, 2001). The Tribe appealed. As far as the Board is aware, the appeal is still pending in the California Court of Appeal.

In its trust acquisition application, the Tribe advised BIA of Appellant's lawsuit and the events which preceded it. The Tribe also stated that, although it had sought cancellation of the agricultural preservation contract prior to applying for trust acquisition, it believed the contract would be rendered void under Cal. Gov't Code § 51295 if the United States acquired the property in trust for a public purpose, such as the low-income housing planned for the property.

On May 4, 2001, the Regional Director issued the decision on appeal here. In that decision, she analyzed the proposed acquisition under the criteria in 25 C.F.R. § 151.10 and 151.11 and stated that BIA intended to take the land into trust.

Appellant appealed the Regional Director's decision to the Board. Briefs were filed by Appellant, the Tribe, and the County of Mendocino.

During preliminary proceedings in this appeal, Appellant was advised that it must include in its opening brief a discussion of its standing to bring the appeal. Appellant's compliance with this requirement was cursory. In its opening brief, it merely asserted, without discussion, that it was an interested party in this matter. It also stated that it was a party to the State court litigation, evidently meaning to imply that its role in the State court litigation gave it standing here. It did not, however, support such a theory with any analysis.

The Tribe and the County argued in their answer briefs that Appellant lacks standing here. Both contended that California law allows individuals to bring suit in the public interest, particularly under the CEQA, without requiring them to meet ordinary standing requirements. Thus, they reasoned, the fact that Appellant was permitted to bring such a suit in State court does not mean that Appellant has standing here. They contended that Appellant fails to meet the standing requirements established in Board decisions such as Utah v. Acting Phoenix Area Director, 32 IBIA 169 (1998), and Redfield v. Acting Deputy Assistant Secretary–Indian Affairs (Operations), 9 IBIA 174 (1982), or in decisions of the Federal courts such as Lujan v. Defenders of Wildlife, 504 U.S. 555 (1992). 1/

1/ The Tribe and the County also cited City of Sault Ste. Marie, Michigan v. Andrus, 458 F. Supp. 465, 468 (D.D.C. 1978), in which it was held that individual taxpayers lack standing in Federal court to challenge a trust acquisition under 25 U.S.C. § 465, and Sault Ste. Marie Tribe v. United States, No. 99-2444, 28 Indian L. Rep. 2136 (6th Cir. May 16, 2001), in which it was held that the standing of an Indian tribe to challenge a trust acquisition for another tribe is to be determined in accordance with the standing analysis described in

In its reply brief, Appellant expanded somewhat on the bare assertion it made in its opening brief. It argued:

> [Appellant] brought the underlying lawsuit as a private attorney general under section 1021.5 of the [California] Code of Civil Procedure. Private individuals are charged with "call[ing] public officials to account . . . insist[ing] that they enforce the law." * * * That is [Appellant's] right, and that right must extend not only to court proceedings to enforce public agency duties, but to administrative proceedings as well.
>
> [Appellant's] particularized and concrete legally protected interest *is* the interest as a private attorney general to enforce the law. This interest will be "injuriously affected by [an] order" granting the request. * * *
>
> The causal connection factors is [sic] best explained by referring to [Appellant's] argument below related to the jurisdictional problems and conflicts of land use factor. As explained, placing the land in trust at this time will create such problems and conflicts and, therefore, provides the very reason to wait for the finality of the state court case *and* the subsequent actions of the county. * * *
>
> Similarly, an ultimate decision to grant the Tribe's request most certainly will result in injury to [Appellant's] interest in enforcing the law. As explained in the opening brief and below, it is premature to grant the request because all the requisite factors cannot be met. [Citations and footnote omitted.]

Appellant's Reply Brief at 3.

This discussion suggests that Appellant was attempting to track the elements of standing described in Lujan v. Defenders of Wildlife:

> [T]he irreducible constitutional minimum of standing contains three elements. First, the plaintiff must have suffered an "injury in fact"—an invasion of a legally protected interest which is (a) concrete and particularized, * * *; [x]/ and (b) "actual or imminent, not 'conjectural' or 'hypothetical,'" * * *. Second, there must be a causal connection between the injury and the conduct complained of—the injury has to be "fairly . . . trace[able] to the challenged action

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fn 1 (continued)
Lujan, 504 U.S. at 560-61 (see excerpt quoted below), and Steel Co. v. Citizens for a Better Environment, 523 U.S. 83, 102-04 (1998).

> of the defendant, and not . . . th[e] result [of] the independent action of some third party not before the court." * * * Third, it must be "likely," as opposed to merely "speculative," that the injury will be "redressed by a favorable decision."
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>
> [x]/ By particularized, we mean that the injury must affect the plaintiff in a personal and individual way. [Citations omitted.]

504 U.S. at 560-61.

Although Appellant evidently reviewed the decision in Lujan, it missed a critical holding in that case, and one which is clearly relevant to Appellant's argument here. In Part IV of its decision, the Supreme Court stated:

> [T]he court [of appeals] held that the injury-in-fact requirement had been satisfied by congressional conferral upon *all* persons of an abstract, self-contained, noninstrumental "right" to have the Executive observe the procedures required by law. [2/] We reject this view.
>
> We have consistently held that a plaintiff raising only a generally available grievance about government—claiming only harm to his and every citizen's interest in proper application of the Constitution and laws and seeking relief that no more directly and tangibly benefits him than it does the public at large—does not state an Article III case or controversy. [Footnote omitted.]

504 U.S. at 573-74.

The theory under which Appellant asserts standing here is similar to, but more extreme than, the one rejected by the Supreme Court in Part IV of Lujan. Appellant seemingly concedes that the right it has exercised under California law is one available to the California public in general. 3/ Yet, it continues to base its claim to standing here solely on that generally available right and fails entirely to describe any concrete injury which affects it "in a personal and

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2/ The Court was here referring to "[t]he so-called 'citizen-suit' provision of the [Endangered Species Act, which] provides, in pertinent part, that 'any person may commence a civil suit on his own behalf (A) to enjoin any person, including the United States and any other governmental instrumentality or agency . . . which is alleged to be in violation of any provision of [the Act]." 504 U.S. at 571-72.

3/ Appellant fails to address the subject of standing under the CEQA or other California law, despite the arguments made by the Tribe and the County on that subject.

The statutory provision under which Appellant states that it brought suit (Cal. Civ. Proc. Code § 1021.5) concerns attorney fees for cases resulting in public benefit.

individual way." In addition, Appellant is seeking to base its standing in this Federal proceeding upon a right created by State law, for purposes of enforcing State law in State court, on a different issue than is before the Board. 4/

Nothing in Federal statute or regulation, or in the Board's decisions, recognizes any right to appeal to the Board in the capacity of a "private attorney general." Rather, as the Board cases cited by the Tribe and the County illustrate, the Board employs a more traditional standing analysis, which is based on the analysis developed in the Federal courts.

Appellant has not even attempted to show that it has standing here under the principles discussed in the Board's cases. The Board finds that Appellant has failed to show that it has standing to bring this appeal.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, this appeal is dismissed for failure to show standing.

//original signed
Anita Vogt
Administrative Judge

//original signed
Kathryn A. Lynn
Chief Administrative Judge

4/ Appellant does not contend that this trust acquisition would be precluded if Appellant ultimately succeeds in its State court litigation. Nor does it respond to the Tribe's argument that, regardless of the outcome of the State court litigation, the agricultural preservation contract would be voided if the United States acquired the tract in trust for the Tribe.